

EXAMINER'S AMENDMENT

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

The application has been amended as follows:

Claim 46 has been cancelled.

On Page 1, the continuing data has been replaced with the following:

CROSS REFERENCE TO RELATED APPLICATIONS

This application is a Continuation-In-Part of copending U.S. Application serial number 09/014,087, filed on January 27, 1998, entitled "PROSTHESES WITH ASSOCIATED GROWTH FACTORS, " (now abandoned) which is incorporated herein by reference.

Claim 46 was cancelled because it remained in a rejected status after the Board of Appeals decision rendered September 1, 2009. Since the Applicant did not take any further action with the application, rejected claims are to be cancelled as explained in the MPEP section 1214.06.

The period under 37 CFR 1.304 for seeking court review of the decision by the Board of Patent Appeals and Interferences rendered September 1, 2009 has expired and no further action has been taken by appellant. The proceedings as to the rejected claims are considered terminated; see 37 CFR 1.197(b). The application has been passed to issue on allowed claims 1, 3, 4, 8-10, 13-15, 28, 29, and 33-45

Conclusion

Applicant should specifically point out the support for any amendments made to the disclosure, including the claims (MPEP 714.02 and 2163.06). Due to the procedure outlined in MPEP 2163.06 for interpreting claims, it is noted that other art may be applicable under 35 USC 102 of 35 USC 103(a) once the aforementioned issue(s) is/are addressed.

Applicant is respectfully requested to provide a list of all copending applications that set forth similar subject matter to the present claims. A copy of such copending claims is respectfully requested in response to this Office action if the application is not stored in image format (i.e. the IFW system) or published.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Paul B. Prebilic whose telephone number is (571) 272-4758. He can normally be reached on 6:30-5:00 M-Th.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Isabella can be reached on 571-272-4749. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Paul Prebilic/
Paul Prebilic
Primary Examiner
Art Unit 3774